

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 20, 2012

In the Matter of WALTERS/GATES, Minors.

No. 306221
Branch Circuit Court
Family Division
LC No. 10-004356-NA

Before: METER, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm.

Respondent completed substance abuse treatment in 2009 and was on probation for a drinking and driving offense in May 2010 when police completed a drug raid at her home. The children were present at the time of the drug raid, and tins with traces of methamphetamine were found in the home. Respondent was jailed for approximately 30 days for violating her probation. Respondent was arrested again for methamphetamine possession in October 2010 and remained incarcerated until March 2011. Upon her release, respondent seemed to do well and was allowed unsupervised overnight visits with her children. She completed substance-abuse rehabilitation multiple times. However, in July 2011, on her wedding night, she was arrested for drinking and driving again and was to be incarcerated until January 2012.

The trial court did not clearly err in finding that statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the court's best-interests determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587

¹ It is not clear whether the trial court also found that MCL 712A.19b(3)(c)(ii) was established by clear and convincing evidence. However, because only one statutory ground needs to be established before the termination of a respondent's parental rights, *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999), we need not address this subsection.

(2009). “A finding is ‘clearly erroneous’ [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted).

The conditions leading to the adjudication were respondent’s substance abuse and incarceration. At the time of the termination hearing, respondent was again incarcerated for substance abuse. Respondent had been incarcerated twice from May 2010 to March 2011, for lengths of 30 days for the first incarceration and five months for the second incarceration, and at the time of the termination hearing she was serving a sentence that began in July 2011 and was to be completed in January 2012. Although respondent argues that her latest relapse should be forgiven because it occurred on her wedding night, the foster care worker testified that, shortly before the wedding, respondent admitted drinking and was warned that she was not to drink at all. Further, respondent drank to the point where she was arrested for her third drunk-driving offense despite completing substance-abuse treatment three times. Clearly, the conditions leading to the adjudication continued to exist at the time of the termination hearing.

Moreover, respondent’s substance abuse and incarceration prevented her from being able to provide proper care and custody for her children at the time of the termination hearing. Respondent demonstrated a pattern of completing substance-abuse rehabilitation, abstaining from substance use and doing well, and then relapsing. Although respondent had been doing well at the time of her latest relapse, this behavior fit into her pattern. The trial court did not clearly err by finding that she would not be able to rectify her substance-abuse issue or provide proper care and custody for her children within a reasonable time considering her children’s ages.

There was also a reasonable likelihood that the children would be harmed if returned to respondent’s custody. Although respondent had been doing well and overnight visits with the children went well before her relapse, respondent’s pattern of relapsing and incarceration was emotionally harmful to her children. Further, respondent had three drinking and driving offenses and admitted to regular methamphetamine use when the children were initially removed from her custody.² Although, as the trial court found, it was unlikely that respondent would intentionally hurt her children, it was likely that she would continue to hurt them emotionally and there was a reasonable probability that they would be physically hurt by neglect because of her substance abuse.

In light of the above considerations, the trial court did not clearly err in determining that petitioner sufficiently established MCL 712A.19b(3)(c)(i), (g), and (j) by clear and convincing evidence.

² A foster-care worker testified that respondent refused to provide a drug screen 22 times since the children came into care. She also tested positive for methamphetamine nine times, for alcohol twice, for opiates three times, and for marijuana once.

The trial court also did not clearly err in finding that it was in the children's best interests to terminate respondent's parental rights. MCL 712A.19b(5). Respondent had been incarcerated for approximately seven of the 15 months the children were in care and continued to struggle with substance abuse. The children were only five and six years old and deserved safety and permanence, which respondent could not provide.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey